IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

MFA.No. 1158 of 2000()

OPMV.150/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANT:
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1. KHADEEJA, W/O.LATE KUNHAMMED.
2. MOIDEEN, S/O. LATE KUNHAMMED.
3. FATHIMA, W/O. MOIDEEN.
4. KASIBARAHANA (MINOR), D/O. LATE KUHAMMED.
5. SHAKKIRA (MINOR) /O. LATE KUNHAMMED.
6. ABDUL RASHEED, S/O. MOIDEEN.
7. MUJEEB RAHMAN (MINOR), S/O.MOIDEEN.
8. ABDUL VAHEED (MINOR), S/O.MOIDEEN.
9. MUMTHAZ (MINOR)D/O. MOIDEEN.
10. SAJNA (MINOR), D/O. MOIDEEN.

(MINOR APPELLANTS 4 AND 5 ARE REPRESENTED BY THEIR GUARDIAN MOTHER THE FIRST APPELLANT. MINOR APPELLANTS 7 TO 10 REPRESENTED BY THEIR GUARDIAN FATHER THE SECOND APPELLANT)
ALL ARE RESIDING AT PAPPATTIL HOUSE, VATTAPARAMBU, P.O.PARAPPUR, KOTTAKKAL, TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS:
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1. A.HANEEFA, S/O.ALIKUTTY, RESIDING AT VELLOOKAVIL HOUSE, POOCHIRA, PUDUPARIYARAM P.O., PALAKKAD.

2. USMAN, S/O. U.ABDU, REIDING AT URUNIYANPARAMBIL HOUSE, MUNDAKKODE, MALAPPURAM.

3. NATIONAL INSURANCE COMPANY LIMITED, MANJERI.

4. U.K.KUMARANKUTTY, S/O.RARU, RESIDING AT UNNIKUNNEL HOUSE, P.O. THALAYADU, KOZHIKODE.

5. THE MANAGING PARTNER, M/S. KERALA TRANSPORT COMPANY (K.T.C.), Y.M.C.S. ROAD, KOZHIKODE.

7. THE NEW INDIA ASSUSRANCE COMPANY LIMITED, CALICUT.

R6 BY ADV. SRI.A. C. DEVY
R3 BY SRI.P.R.RAMACHANDRA MENON

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 1158 of 2000

Dated this 16th day of October, 2007

JUDGMENT

Koshy,J:

A 29 year old businessman sustained fatal injuries in a road accident on 15.9.1993. He died immediately. His wife, minor children, father and mother filed application for compensation. The Tribunal found that accident occurred due to the negligence of the driver of the vehicle insured by the 3rd respondent. The only dispute is regarding quantum of compensation. Hence, we are considering that only in this appeal.

2. First question is regarding the monthly income. According to the claimants, deceased was conducting a provision store and a stationery store and his average monthly income was Rs.14,000/- per month. He produced Ext.A16 account book to show that his monthly income was Rs.14,000/-. No income tax statements were produced. The Tribunal fixed Rs.2500/-as monthly income and deducted 1/3rd of monthly income for calculating compensation. The account books as well as the evidence show that he was conducting a

provision store as well as stationery store. Ext.A11 is the copy of the profession tax receipt. In the absence of income tax returns we are not accepting Rs.14,000/- as the monthly income. However, we also note that his business was run by his relatives. That is the reason why we are taking reduced income. In the above circumstances, we are of the opinion that at least Rs.4500/- ought to have been taken as the monthly income taking Rs.3000/- as the monthly loss of dependency to the family. Taking guidelines from II schedule, the Tribunal has taken 18 as the multiplier. Even though it was argued that in view of the reduction of interest rate, increase of average age expectation of Indians, higher multiplier should be adopted. We are of opinion that no enhancement in the multiplier adopted by the Tribunal is required. Therefore, compensation payable for loss of dependency will be Rs.6,48,000/- (3000 x 12 x 18). The Tribunal awarded compensation for loss of dependency assessed at Rs. 3,56,400/-. The claimant will be entitled to an additional compensation of Rs.2,91,600/-. The wife of the deceased was only 24 years at the time of accident. Tribunal awarded Rs.10,000/- for loss of love and affection and consortium. At the time accident one child was in the womb. For two children, Rs.5000/- each is allowed i.e.Rs.10,000/- will be allowed. We are of the opinion that no

grounds are made out for further enhancement in any of these heads. It is submitted that for pain and suffering, funeral expenses, transportation etc. only Rs.9500/- was granted. It was an instantaneous death. Considering the total compensation granted , we are not grating any increase on this head. Additional compensation of Rs.2,91,600/-will carry interest at 7.5% from the date of petition till payment. The above amount shall be deposited by the third respondent Insurance company over and above the decreed amount by the Tribunal. On deposit, an amount of Rs.30,000/- each can be withdrawn by the father and the mother of the deceased and 1/3rd of the balance amount can be disbursed to first appellant widow and 2/3rd should be deposited in name of the minor children of the deceased in the National Bank which can be withdrawn by them whey they become major.

M.F.A. is partly allowed.

J.B. KOSHY, JUDGE.

K. HEMA, JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 1158 of 2000

Dated this 16th day of October, 2007

JUDGMENT